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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

* * * *

IRENE HUMPHREY, an individual,

Plaintiff,

vs.

CITY OF FERNLEY, a municipality,
DOES 1-10, inclusive,

Defendants.

CASE NO.:

COMPLAINT

(38 U.S.C. § 4301, et seq.)

DEMAND FOR JURY TRIAL

IRENE HUMPHREY, as and for a Complaint, hereby alleges as follows:

JURISDICTION

1. This Court has jurisdiction over this action pursuant to 42 U.S.C. § 2000e-5.

2. Venue in this district is proper pursuant to 28 U.S.C. § 1391.

PARTIES

3. At all times relevant hereto, Plaintiff IRENE HUMPHREY (HUMPHREY) is an individual residing in the City of Fernley, Lyon County, Nevada.

4. At all times relevant hereto, Defendant CITY OF FERNLEY ("CITY") has been a "General Law City" organized under the laws of the State of Nevada. The CITY is an employer within the meaning of 42 U.S.C. § 2000e.

1 5. Plaintiff is ignorant of the true names and capacities of defendants sued
2 as DOES 1 through 10, inclusively, and therefore Plaintiff sues said "Defendant
3 Employers" by such fictitious names. Plaintiff reserves the right to amend the
4 complaint to name the DOE defendants individually or corporately as they become
5 known. Plaintiff alleges that each of the defendants' names as DOES was in some
6 manner responsible for the acts and omissions alleged herein and Plaintiff will amend
7 the complaint to allege such responsibility when same shall have been ascertained.

8 6. All of the acts and failures to act alleged herein were duly performed by
9 and attributable to Defendants, each acting as a successor, agent, employee or
10 under the direction and control of the others, except as specifically alleged.

11 7. HUMPHREY, a 36 year old female, was formerly employed as a
12 "Maintenance Helper" with the City of Fernley Parks & Recreation Department in
13 Fernley, Nevada. She began working for the City of Fernley in or about July of 2005.

14 8. At all times relevant hereto, KEITH PENNER ("PENNER"), was the
15 CITY's Parks & Recreation Director, a management employee, and one of
16 HUMPHREY's supervisors.

17 9. Prior to being employed by the CITY, PENNER had been employed by
18 the State of Nevada. He was asked to resign his employment with the State after
19 being convicted of misdemeanor battery and disturbing the peace, for his overt
20 sexual conduct and advances towards two female subordinates, Amy Bray and
21 Michelle Roberts, in August 2003.

22 10. At all times relevant hereto, SANDY DAVIS ("DAVIS") was the CITY's
23 Operations & Projects Coordinator, a management employee, and one of
24 HUMPHREY's supervisors.

25 11. Shortly after DAVIS began working for the CITY, PENNER and DAVIS
26 began to make rude, derogatory and sexual comments to HUMPHREY, as well as
27 other female employees including Jennifer Durham, both in person and on the
28 walkie-talkies used by Fernley employees.

1 12. PENNER sexually propositioned HUMPHREY in the summer of 2005.
2 PENNER threatened HUMPHREY with loss of her job if she did not submit to his
3 advances, but promised her a full-time position if she complied.

4 13. HUMPHREY is a single mother of three children who must work to
5 support her children and herself. Because she was in fear of losing her job and
6 being unable to support her children, HUMPHREY involuntarily submitted to
7 PENNER's sexual demands. While she was at work, PENNER approached
8 HUMPHREY in a City of Fernley maintenance shed and then had sexual intercourse
9 with her in the shed.

10 14. In September 2005, HUMPHREY was sexually propositioned by
11 DAVIS, who also threatened her with loss of her job and promised her a full-time job
12 in Vector Control if she complied.

13 15. Again, in fear of losing her job and being unable to support her children,
14 HUMPHREY involuntarily submitted to his sexual demands in early September 2005.
15 While she was at work, DAVIS took HUMPHREY to a desert area where the City of
16 Fernley sprays insecticide, and then had sexual intercourse with her.

17 16. DAVIS was always rude to HUMPHREY, calling her "Blondie" and
18 refusing to refer to her by name.

19 17. After submitting to PENNER and DAVIS' sexual demands, neither
20 arranged to have HUMPHREY become a full-time employee. PENNER told
21 HUMPHREY that a man was needed for the full-time position he offered. DAVIS told
22 HUMPHREY she did not have enough experience with Vector Control, and that he
23 was hiring recent college graduates with science degrees for that position. DAVIS
24 has no college degree.

25 18. PENNER and DAVIS have continued to make sexual remarks and
26 engage in rude and intimidating behavior toward HUMPHREY.

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1 19. Notwithstanding the earlier conditions put on his sexual demands,
2 PENNER has removed HUMPHREY from her position in the parks and instead made
3 her a janitor at Fernley City Hall, where his office is located.

4 20. Notwithstanding the earlier conditions put on his sexual demands,
5 DAVIS later told HUMPHREY that his advances had nothing to do with work and
6 stated "let's keep this outside of work."

7 21. For at least five months DAVIS went to HUMPHREY's home in the
8 evening two or three times a week in 2005 and 2006, sometimes arriving when she
9 was with her children in the front yard of the house. At these times DAVIS would
10 insist that HUMPHREY should go to his house or "go out" with him. HUMPHREY did
11 not allow DAVIS to enter her home at these times.

12 22. DAVIS has also gone to HUMPHREY's home after work hours while
13 obviously intoxicated. At these times he sexually propositioned her, swore at her,
14 and touched or grabbed her arms.

15 23. John Mizzles, a co-worker, earlier had conversations with DAVIS in
16 which DAVIS stated that because "no one wanted to step up to the plate [to have sex
17 with HUMPHREY], he had to." DAVIS also pointed out to Mizzles the desert location
18 where DAVIS and HUMPHREY had sex, and stated that was where DAVIS "had
19 nailed" HUMPHREY.

20 24. On September 3, 2006, Mizzles, told HUMPHREY that since the time
21 she was hired, DAVIS had been making statements to the effect that "some one
22 needs to step up to the plate and do Blondie."

23 25. HUMPHREY was distressed and frightened to learn that DAVIS was
24 speaking in this manner to her co-workers, and she became more fearful of him. By
25 this time, HUMPHREY was working alone at night at Fernley City Hall, and she was
26 apprehensive of contact with PENNER and DAVIS for fear they would force her into
27 more unwilling sexual encounters.

28

1 26. DAVIS' sexually harassing behavior toward other female CITY
2 employees has been the subject of complaints to the CITY.

3 27. HUMPHREY did not initially report the incidents with PENNER and
4 DAVIS, including the unwanted visits to her home, because she was fearful of losing
5 her job. HUMPHREY reported the sexual encounters and other incidents of
6 harassment to Ed Lefebvre, Maintenance Supervisor, by telephone, on Sunday,
7 September 3, 2006. During that phone call, HUMPHREY told Lefebvre that Mizzles
8 had conversations with DAVIS in which he was told that DAVIS had "nailed"
9 HUMPHREY, and had pointed out the area where it had occurred.

10 28. It took Ed Lefebvre ten (10) days to put HUMPHREY's complaint in
11 writing and then physically deliver it to the City Manager, Gary Bacock, who signed
12 an acknowledged the document on September 13, 2006. See letter attached as
13 EXHIBIT A.

14 29. On September 14, 2006, immediately after Lefebvre tendered
15 HUMPHREY's complaint (which named Mizzles as a key witness) to the City
16 Manager, Mizzles was terminated, confirming HUMPHREY's fears that her means of
17 livelihood were in jeopardy.

18 30. The CITY failed to adequately investigate HUMPHREY's complaints or
19 take steps to ensure her safety. Instead, the CITY assigned employees to scrutinize
20 her work and assigned her even more undesirable work hours.

21 31. HUMPHREY filed a charge of discrimination with NERC/EEOC on
22 September 15, 2006 as to the sexual harassment, hostile work environment and
23 retaliation by PENNER and DAVIS.

24 32. HUMPHREY's EEOC charge was faxed to the City Manager Gary
25 Bacock. Bacock attempted numerous times to interview HUMPHREY on September
26 15, 16 and 18 without her counsel present, although they were advised of counsel's
27 availability on September 21 and 22, 2006.

28

1 33. In retaliation for engaging in this protected activity, her supervisor, Ed
2 Lefebvre, advised her that her work schedule would be changed from 5:00 p.m. to
3 8:00 p.m. to the undesirable hours of 3:00 a.m. to 6:00 a.m., Sunday through
4 Thursday.

5 34. On October 12, 2006, HUMPHREY received a memo from Lowell
6 Patton, Acting City Manager, which stated that she was to work Monday through
7 Friday from 4:00 a.m. to 7:00 a.m. and that "the 'flexible' nature of her work hours
8 must cease immediately." On October 25, 2006, Humphrey was issued a letter
9 requesting that she verify the hours she worked during the week of October 16, 2006
10 to October 20, 2006.

11 35. Lefebvre stated that the City's reason for changing her schedule was
12 that the CITY wanted to prevent interaction between her and the alleged harassers,
13 DAVIS and PENNER, about whom she complained in her first charge to the
14 NERC/EEOC.

15 36. In February 2007, Jennifer Dunham, a new CITY employee, was
16 sexually harassed by DAVIS. A formal complaint was filed with the Gary Bacock, the
17 CITY manager, the next work day.

18 37. In April, 2007, after having filed her second NERC/EEOC complaint,
19 HUMPHREY learned from another City employee that there had been a mandatory
20 meeting for Parks Department staff that morning at 7:00 a.m., at which the
21 employees received a handout about another meeting for "All Parks Department
22 Staff" which would occur on April 3, 2007. HUMPHREY was not informed of the
23 original meeting and she did not receive a handout or instructions to attend the
24 meeting for "All Parks Department Staff."

25 38. At the April 3, 2007 meeting, the other Parks Department staff received
26 a memorandum regarding spring schedules. The memorandum listed the upcoming
27 schedule for City Hall Janitorial Staff and Field Staff. HUMPHREY's name was not
28 listed anywhere on the schedule for either category. The memorandum included a

1 signature page which was to be signed by each employee to verify its receipt.
2 HUMPHREY's name was not on the signature page.

3 39. The "Field Staff" list did not include HUMPHREY's name of the names
4 of any other female employees. In the year prior to HUMPHREY filing her sexual
5 harassment claims, HUMPHREY had been a member of the Field Staff.

6 40. The City of Fernley continued to discriminate and retaliate against
7 Humphrey. In June, 2007, again after having filed her NERC/EEOC complaint, Ed
8 Lefebvre confirmed that HUMPHREY's schedule had been reduced to one hour per
9 day, in spite of her multiple requests to be returned to full-time seasonal employment.

10 41. At or around the same time, Lefebvre's requests that HUMPHREY be
11 returned to full time work were refused and other seasonal employees were hired
12 instead.

13 42. Lefebvre stated under oath that the CITY Manager told him he was
14 going to address HUMPHREY's return to seasonal employment, but instead ended
15 up ignoring Lefebvre's and HUMPHREY's requests.

16 43. PENNER has admitted under oath that at the time he had sexual
17 intercourse with HUMPHREY, and others, that he knew that he was infected with the
18 virus for genital herpes, an incurable sexually transmitted disease.

19 44. Although fully aware of his infection, PENNER failed to advise
20 HUMPHREY that he was infected with genital herpes at any time prior to or after his
21 sexual intercourse with her.

22 45. HUMPHREY has since tested positive for genital herpes. There are no
23 indications that HUMPHREY had contracted the disease prior to PENNER's sexual
24 intercourse with her.

25 46. HUMPHREY timely filed charges of discrimination jointly with the
26 Nevada Equal Rights Commission ("NERC") and Equal Employment Opportunity
27 Commission ("EEOC") on September 15, 2006, November 24, 2006, April 11, 2007,
28 and July 4, 2007.

62. When HUMPHREY reported the harassment by PENNER and DAVIS to Lefebvre, Maintenance Supervisor she was opposing a practice made unlawful within the meaning of 42 USC § 2000e-2.

63. HUMPHREY suffered additional adverse employment action in the form of oppressive supervision and undesirable reassignments as a result of her opposition to PENNER's and DAVIS's unlawful practices.

64. As a result of such retaliation HUMPHREY has suffered damages in excess of \$100,000.

THIRD CLAIM FOR RELIEF

DEPRIVATION OF CIVIL RIGHTS – 42 U.S.C. 1983.

65. HUMPHREY hereby incorporates by reference all preceding paragraphs of the Complaint as though fully set forth herein.

66. The CITY, through its management employees PENNER and DAVIS as described above, acting under color of law, intentional subjected HUMPHREY to deprivation, infringement and abridgement of rights and privileges and immunities secured by the Constitution of the United States, including the right to equal protection of the laws as guaranteed by the Fourteenth Amendment to the United States Constitution and the right to be free from nonconsensual violation of intimate bodily integrity guaranteed by the Fourteenth Amendment to the United States Constitution.

67. The CITY has maintained and fostered a custom, policy and practice of discrimination and harassment and has committed the acts alleged herein pursuant to this custom, policy and practice.

68. The CITY committed the acts alleged herein maliciously, fraudulently, and oppressively, with the wrongful intention of injuring HUMPHREY, from an improper and evil motive amounting to malice, and in conscious disregard of HUMPHREY's rights.

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1 69. As a direct and proximate result of the aforementioned acts,
2 HUMPHREY suffered physical injury and loss of salary and employment-related
3 benefits. HUMPHREY continues to suffer those losses and expects to continue to
4 suffer those losses until remedied through this action. HUMPHREY has also suffered
5 extreme humiliation, mental anguish, and emotional and physical distress, all of
6 which caused and continue to cause great physical and emotional pain and suffering.

7 **FOURTH CLAIM FOR RELIEF**

8 **INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**

9 70. HUMPHREY hereby incorporates by reference all preceding
10 paragraphs of the Complaint as though fully set forth herein.

11 71. The CITY's conduct in ratifying PENNER's and DAVIS' conduct in
12 coercing HUMPHREY into sexual contact as a condition to her employment, and
13 which resulted in her contracting an incurable sexually transmitted disease, isolating
14 her and putting her in apprehension of further offensive and harmful contact, is so
15 outrageous in character, and so extreme in degree, as to go beyond all possible
16 bounds of decency and be regarded as atrocious and utterly intolerable.

17 72. HUMPHREY has suffered emotional distress from the CITY's conduct
18 which has made her ill and unable to work, and which has caused her to seek
19 treatment from a physician.

20 73. As a result of such emotional distress, HUMPHREY has suffered
21 damages in excess of \$100,000.

22 **FIFTH CLAIM FOR RELIEF**

23 **NEGLIGENT HIRING AND RETENTION**

24 74. HUMPHREY hereby incorporates by reference all preceding
25 paragraphs of the Complaint as though fully set forth herein.

26 75. An employer has a general duty to conduct a reasonable background
27 check on a potential employee to ensure that the employee is fit for the position.
28

1 76. Before being hired by the CITY, PENNER had approached subordinate
2 female employees of the State of Nevada and told them they had to submit to his
3 sexual advances in order to retain their jobs or to get a promotion. PENNER had
4 been convicted of battery and disturbing the peace in connection with one such
5 incident, which conviction is a matter of public record.

6 77. The CITY negligently breached its duty to HUMPHREY when it failed to
7 adequately and reasonably check the backgrounds of PENNER which would have
8 revealed his prior criminal and sexually harassing conduct.

9 78. The CITY further negligently breached its duty to HUMPHREY when it
10 retained PENNER as an employee and placed him in a management position over
11 subordinate female employees when it knew or should have known of his unfitness
12 for duty prior to his harassment of HUMPHREY based upon his prior conduct and
13 convictions.

14 79. The CITY further negligently breached its duty to HUMPHREY when it
15 retained PENNER as an employee following HUMPHREY's complaint and actual
16 notice of PENNER's prior harassment of female employees.

17 80. The CITY was further negligent in the hiring and retention of DAVIS in a
18 management position, thus exposing other females to his abuses.

19 81. The CITY further negligently failed to properly educate and train
20 employees and update its' discrimination policies.

21 82. As a result of the CITY's negligence, HUMPHREY has suffered
22 damages in excess of \$100,000.

23 **SIXTH CLAIM FOR RELIEF**

24 **NEGLIGENT SUPERVISION**

25 83. HUMPHREY hereby incorporates by reference all preceding
26 paragraphs of the Complaint as though fully set forth herein.

27 84. DAVIS and PENNER presented a risk of harm to others because of
28 their sexually predatory behavior and their disregard for the civil rights of women.

